

Order

Entered:

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

July 1, 2003

ADM File No. 2003-15

Proposed Amendment and Redesignation
of Administrative Order No. 1993-5

State Bar of Michigan Activities

On order of the Court, this is to advise that the Court is considering a proposed administrative order to replace Administrative Order No. 1993-5, as recommended by the State Bar of Michigan. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered by the Court at a public hearing. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below by underlining for new text and strikeouts for text that would be deleted. A staff comment immediately follows each section.]

I. Ideological Activities Generally.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

- (~~a~~A) the regulation and discipline of attorneys;
- (~~b~~B) ~~matters relating to~~ the improvement of the functioning of the courts, ~~judicial efficacy and efficiency~~;
- (~~c~~C) ~~increasing~~ the availability of legal services to society;
- (~~d~~D) the regulation of attorney trust accounts; and
- (~~e~~E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity and regulation of the legal profession.

~~On or about August 15 of each year, t~~The State Bar of Michigan shall permanently post on its website, and annually publish in the Michigan Bar Journal, a notice advising members of these limitations on the use of dues and the State Bar budget for the next fiscal year.

Staff Comment: These proposed changes, as well as the related changes in Section II, are designed to ensure a higher degree of confidence that State Bar positions reflect consensus among the membership and to ensure the vitality of the Bar's mechanisms for soliciting, understanding, and representing the views of its members.

II. Activities Intended to Influence Legislation.

- (A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.
- (B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:
 - (1) a legislator requests the assistance;
 - (2) the executive director, in consultation with the president of the State Bar of Michigan, approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and
 - (3) the ~~president~~ executive director of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.
- (C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of the ideological-activities requirements in Section I.
- (D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice published in the Michigan Bar Journal posted on the State Bar website at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation ~~would~~ might be discussed at the meeting. The ~~published~~ posted notice shall include a brief summary of the legislation, a link to the text and status of the pending legislation on the Michigan Legislature website, and a statement that members may express their opinion to the State Bar of Michigan at the meeting, electronically, or by written or telephonic communication to the State Bar of Michigan. The webpage on which the notice is posted shall provide an opportunity for members to respond electronically, and the comments of members who wish to have their comments made public shall be accessible on the same webpage. ~~When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.~~
- (E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be posted on the State Bar website as soon as possible after the

vote, and published in the next Michigan Bar Journal. When either body adopts a position on proposed legislation by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

(F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf. Whenever a section engages in ideological activities, it must include on the first page of each submission, before the text begins and in print larger than the statement's text, a disclosure indicating

(1) that the section is not the State Bar of Michigan but rather a section whose membership is voluntary,

(2) that the position expressed is that of the section only, and that the State Bar has no position on the matter, or, if the State Bar has a position on the matter, what that position is,

(3) the total membership of the section,

(4) the process used by the section to take an ideological position,

(5) the number of members in the decision-making body, and

(6) the number who voted in favor and opposed to the position.

If an ideological communication is made orally, the same information must be effectively communicated to the audience receiving the communication.

Although the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, for a violation of this Administrative Order or the State Bar of Michigan's bylaws, the State Bar of Michigan may revoke the authority of a section to engage in ideological activities, or to use State Bar facilities or personnel in any fashion, by a majority vote of the Board of Commissioners. If the Board determines a violation occurred, the section shall, at a minimum, withdraw its submission and communicate the withdrawal in the same manner as the original communication occurred to the extent possible. The communication shall be at the section's own cost and shall acknowledge that the position was unauthorized.

Staff Comment: The proposed changes in Section II(B)(2) and (4) are housekeeping measures that transfer the authority for approval of legislators' requests for technical assistance from the president of the State Bar to the executive director, in consultation with the president, and that gives the executive director sole authority over the publication responsibility.

The State Bar has identified two problems with the current exception for the ideological activities of State Bar sections: a section viewpoint may not be reflective of the views of a segment of the profession, and the section may be communicating its views in such a way that they are mistakenly perceived to be the views of the Bar as a whole. Proposed subsection (F) is intended to reinforce the requirements of the current bylaws and to pave the way toward correction of these problems.

III. Challenges Regarding State Bar Activities.

- (A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice, by e-mail or regular mail, to the executive director.
 - (a1) A challenge involving legislative advocacy must be filed with the State Bar by e-mail or regular mail within 60 days of the posting of notice of adoption of the challenged position on the State Bar of Michigan website postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).
 - (b2) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked or e-mailed on or before October 20 following the publication of the budget funding the challenged activity.
 - (c3) A challenge involving any other ideological activity must be postmarked or e-mailed on or before the last day of the month following the month in which disclosure of that ideological activity is published in the Michigan Bar Journal.

Failure to challenge within the time allotted shall constitute a waiver.

- (B) After a written challenge has been received, the executive director shall promptly determine the pro rata amount of the member's dues used to fund the challenged activity and shall place that amount in an escrow account pending determination of the merits of the challenge place the item on the agenda of the next meeting of the Board of Commissioners, and shall make a report and recommendation to the Board concerning disposition of the challenge. In considering the challenge, the Board shall direct the executive director to take one or more of the following actions:

- (1) dismiss the challenge, with explanation;

- (2) discontinue the challenged activity;
 - (3) revoke the challenged position, and publicize the revocation in the same manner and to the same extent as the position was communicated;
 - (4) arrange for reimbursement to the challenger of a pro rata share of the cost of the challenged activity; and
 - (5) arrange for reimbursement of all members requesting a pro rata share of the cost of the challenged activity in the next dues billing.
- ~~(C) — Upon expiration of the deadline for receipt of written challenges to the same activity, the Board of Commissioners shall decide whether to give a pro rata refund to the challengers or to refer the challenge to arbitration.~~
- ~~(D) — A challenge that is not resolved between the parties shall be submitted to an arbitrator appointed by the American Arbitration Association, who shall determine whether the funding of the activity complies with the limitations of this order. If not, the arbitrator shall determine the pro-rata share of dues, plus statutory judgment interest from the date of payment of those dues to the State Bar of Michigan, that is to be refunded. The State Bar of Michigan has the burden of proving by a preponderance of the evidence that the activity is permitted by this order. The necessary costs of the arbitration shall be paid by the State Bar of Michigan.~~
- ~~(E) (C) A challenger or the State Bar of Michigan may seek review by this Court of the arbitrator's decisions as to whether the challenged activity violates the limitations on State Bar ideological activities set forth in this order, and as to the appropriate remedy for a violation any pro rata share of dues to be refunded.~~
- (D) A summary of the challenges filed under this section during a legislative term and their disposition shall be posted on the State Bar's website.

Staff Comment: These proposed changes are designed to make the procedures for member challenges to State Bar advocacy more practical and effective.

IV. Other State Bar Activities.

The State Bar of Michigan shall:

- (A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings; and
- (B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated; ;

- (C) ~~limit its funding of the Michigan Lawyers Auxiliary to \$5000 per year with adjustments for inflation after 1981, the funding to continue for as long as Michigan Lawyers Auxiliary continues its Law Day activities, specifically including the Law Day essay contest.~~

Staff Comment: This proposed change is a housekeeping measure that eliminates the funding provision for the Lawyers Auxiliary Law Day program, which does not fit with the other issues in the order. Law Day activities are not of an ideological nature, but are educational and designed to introduce students to the court system and to encourage greater public understanding of the legal system.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. Please refer to ADM File No. 2003-15, when filing a comment. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt/resources/administrative/indexes/htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 1, 2003 Corbin R. Davis

Clerk